

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company

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**Petition to approve an Advanced
Metering Infrastructure Pilot
Program and associated tariffs**

Docket No. 09-0263

**REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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Staff of the Illinois Commerce Commission (“Staff”), by and through its counsel, pursuant to Section 200.800 of the Rules of Practice (83 Ill. Adm. Code 200.800) of the Illinois Commerce Commission (“Commission”), respectfully submits its Reply Brief in the above-captioned matter.

I. INTRODUCTION

The Initial Brief of the Staff of the Illinois Commerce Commission (“Staff’s Initial Brief” or “Staff IB”) was filed on September 8, 2009. The Initial Brief of the People Of the State of Illinois and AARP (“AG/AARP’s Initial Brief” or “AG/AARP IB”), the Post-Hearing Brief of Commonwealth Edison Company (“ComEd’s Initial Brief” or “ComEd IB”), the Initial Brief of the Citizens Utility Board (“CUB’s Initial Brief” or “CUB IB”), the Initial Brief of the City of Chicago (“City’s Initial Brief” or “City IB”), the City of Elgin’s Post-Hearing Brief (“Elgin’s Initial Brief” or “Elgin IB”), the Chicago Transit Authority’s Initial Hearings Brief (“CTA’s Initial Brief” or “CTA IB”), the Initial Brief of The Illinois

Competitive Energy Association (“ICEA’s Initial Brief” or “ICEA IB”), the Initial Brief of the Illinois Industrial Energy Consumers (“IIEC’s Initial Brier” or “IIEC IB”), Post-Hearing Brief of Local Union No. 15, International Brotherhood of Electrical Workers, AFL-CIO (“IBEW’s Initial Brief” or “IBEW IB”), and Metra’s Initial Post-Hearing Brief (“Metra’s Initial Brief” or “Metra IB”) were also filed or served on September 8, 2009.

Some of the issues raised in the parties’ initial briefs were addressed in Staff’s Initial Brief and, in the interest of avoiding unnecessary duplication, Staff has not repeated every argument or response previously made in Staff’s Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff stands on the position taken in Staff’s Initial Brief.

Staff also notes that ComEd’s Initial Brief contains arguments seeking (i) reversal of the ALJ’s ruling striking the portion of the Petition seeking approval of the extension of Rider AMP to ARRA-Funded Smart Grid Projects and (ii) approval of the request for extension of Rider AMP to ARRA-Funded Smart Grid Projects. ComEd IB, pp. 39-53. The ALJ’s ruling was the subject of Commonwealth Edison Company’s Petition for Interlocutory Review of ALJ Order Dismissing Stimulus Relief filed August 25, 2009, which was denied by the Commission on September 11, 2009. Docket No. 09-0263, Notice of Commission Action (Sept. 11, 2009). It is Staff’s understanding from statements made by the Commissioners that the Commission intends to address the issue of whether to extend Rider AMP to ARRA-Funded Smart Grid Projects in Docket 09-0407, the proceeding to consider the “Petition to approve proposed Federal Stimulus Project and associated tariffs” filed by Commonwealth Edison Company (“ComEd’ or the “Company”) on September 2, 2009. Further, counsel for ComEd also issued an e-

mail notice to the service list in this docket expressing a similar understanding of the Commission's intent, and indicating that in view of the Commission's decisions and a desire to simplify and streamline this case, ComEd has determined not to pursue further the stricken relief in this Docket. In accordance with the foregoing, Staff will not be responding to ComEd's arguments regarding extension of Rider AMP to ARRA-Funded Smart Grid Projects.

II. ARGUMENT

A. AMI Pilot Program Location and Size

1. Size of the AMI Pilot Program

The People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois (the "AG") and AARP (collectively, "AG/AARP") state that "ComEd's AMI pilot proposal exceeds the scope necessary to conduct such a pilot demonstration of AMI meters." AG/AARP IB, p. 7. AG/AARP also state that "[a]ccordingly, the Commission should direct ComEd to scale back their proposed pilot to incorporate a test of 5,000 to 10,000 AMI meters for purposes of evaluating the operational characteristics and effects of the AMI technology." Id, p. 9.

The Commission's order in Docket No. 07-0566 envisioned a pilot program of "up to 200,000 meters." *In re: Commonwealth Edison Company*, ICC Docket No. 07-0566 (Order dated September 10, 2008) at 138. Thus, while Staff shares AG/AARP's concern that the pilot program should be conducted as efficiently as possible, Staff believes that ComEd's proposal to deploy 130,000 - 141,000 meters is consistent with the Commission's directive for the scope of the pilot program.

2. City of Elgin Meters

Staff has reviewed the ComEd and Intervenor Briefs and continues to maintain its position that the Commission should deny recovery through Rider AMP for all costs associated with approximately 10,000 meters the Company proposes to install in the City of Elgin. Staff IB, pp. 5-6. The goal of the pilot is to determine whether full deployment is cost effective. The testimony of Mr. Jensen indicates that these meters are not being used in either the operational or customer application evaluations. ComEd Ex. 7.0, p. 6.

Despite the Company's assurances that "Elgin's experience with the use of these meters, specifically in connection with its energy conservation plan, will provide valuable information on how other communities will be able to leverage the capabilities of AMI in connection with efforts to reduce their communities' energy consumption" (ComEd IB, p 30), no witness in this case provided any indication of how or if this evaluation assistance is to be conveyed to the Commission or used to determine whether full deployment of AMI meters is cost-effective.

B. Amortization period of regulatory asset for retired meters

AG/AARP continues to advocate for a 13-year amortization period for the amortization period for the un-recovered costs of meters that will be prematurely retired in the AMI pilot program. They opine that the difference in amortization periods creates about \$178,000 of added expenses for ratepayers. AG/AARP IB, p. 22. Staff disagrees that the length of the amortization period will increase any costs to ratepayers. In a

general rate proceeding, the length of the amortization period can result in a utility over or under-recovering the cost of the expense amortized since the amount recovered in rates is never reconciled with the actual cost. Here, however, the estimated cost of the regulatory asset will be reconciled to the actual amount incurred by ComEd in the reconciliation proceeding. See Rider AMP, Annual Reconciliation Section, Factor AAmort. The only chance of over or under recovery of the regulatory asset is if a balance still exists at the time of ComEd's next general rate case, wherein any remaining unamortized balance would then be recovered in base rates. This case, though, is not pre-determining any amortization period for such a scenario. The only issue is the appropriate amortization period to be used in calculating Rider AMP. Ratepayers will not pay more under ComEd's proposal than the AG/AARP proposal due to the reconciliation process discussed herein. The 10-year period is reasonable as discussed in Staff and ComEd's initial briefs, and should be adopted by the Commission.

C. Rider AMP

1. Allow the recovery of customer application costs through Rider AMP

AG/AARP state that ComEd's Customer Applications proposal exceeds the scope of the Commission's order in Docket 07-0566. AG/AARP IB, p. 10. Staff recognizes that the Commission did not order ComEd to conduct customer application tests in conjunction with operational testing of the AML meters. Staff IB, p. 9. However, Staff believes that an assessment of the potential demand response and related benefits resulting from the introduction of AML meters will need to be performed prior to

any full deployment proposal that ComEd may offer in the future. It would undoubtedly be more costly to perform testing of customer response to dynamic pricing after the conclusion of the AMI pilot. Thus, Staff recommends that ComEd be permitted to conduct customer applications testing within the AMI pilot, subject to the recommendations that Staff offered in its Initial Brief. In short, Staff believes that the Customer Applications tests should be considered part of the AMI Pilot, and as such the costs of such tests should also be afforded rider recovery pursuant to the Commission's decision to allow rider recovery of the AMI Pilot costs. Staff also recommends that the Commission permit ComEd to modify Rider AMP to collect expenses associated with customer applications. Staff recommends that the Commission consider capping the amount ComEd may collect to 10% above ComEd's forecasted level of expenditures of \$14,839 million. Staff IB, p. 9.

2. Exclude incentive compensation costs from Rider AMP cost recovery

ComEd contends that it would be improper to exclude prudent and reasonable costs from recovery through Rider AMP. ComEd IB, p. 37. It further argues that there is no reason to exclude the types of incentive compensation costs that the Commission has already expressly approved. Finally, it suggests that the Commission require that the Rider AMP calculations be done consistent with its *07-0566 Order*, pending the outcome of the appeal of that decision. *Id.*

ComEd's proposal erroneously places the burden on Staff and other parties to annually ensure that Rider AMP's incentive compensation costs are calculated in an identical fashion as that in Docket No. 07-0566. Staff IB, p. 12. Staff has demonstrated

why such an annual burden is unreasonable. Staff IB, pp. 10-12. Yet, ComEd has not demonstrated any financial reason why ratepayers must finance incentive compensation related to the AMI pilot program. Staff IB, pp. 11-12. ComEd's proposal should be rejected by the Commission, and Rider AMP should expressly exclude cost recovery of incentive compensation.

D. Rider AMP-CA

1. Decline recovery of Inclining Block Rate design costs

ComEd argues that it is agreeing to several suggestions made by Staff witness Dr. Brightwell regarding its originally proposed Inclining Block Rate ("IBR"). Specifically, the Company states:

- ComEd agrees that it would be appropriate to weather-normalize the baseline data obtained from customers from 2009. In fact, the extremely cool 2009 summer year is a good example of the need to do this. If there was normal weather in 2010, virtually all customers' usage would be much higher than their baselines. This would not only increase customers' costs, but would confound the study as it would be very difficult for customers to take advantage of the opportunity to decrease overall usage while tracking online with the daily data. To accomplish this adjustment, ComEd proposes to add the term "weather adjusted" to three places in Rider AMP-CA. Hemphill Reb., ComEd Ex. 8.0, 27:562-570.
- ComEd agrees that the proposed IBR rate design could be made even more revenue neutral. As originally written, a customer using more than his/her baseline amount will experience a price per kWh which is twice what it would be on the applicable flat rate. ComEd proposes to resolve this problem by adding an additional block at the weather adjusted baseline value which changes the applicable rate to the same value as the applicable flat rate (as used in the second block). *Id.*, 27:571-576. See ComEd Ex. 8.3 (pages X+9 and X+10) for recommended language.

ComEd IB at 20.

However, neither Dr. Brightwell nor any other Staff witness made any of the alleged suggestions to which ComEd asserts motivation for its revisions of the tariff language in Rider AMP-CA. Dr. Brightwell's testimony made absolutely no criticism of revenue neutrality in the originally proposed IBR and, although he criticized the sensitivity of the rate design to a lack of weather normalization, he also testified that even if the design flaw was corrected this rate would not be scalable beyond the pilot. ICC Staff Ex. 3.0 at 7-8.

By not scalable, Staff means that even if the experiment results indicate that the IBR is incredibly successful at reducing usage, this discovery is meaningless because any energy savings that occur under this rate come at the expense of the Company's revenue requirement. Therefore, unless the Company is willing to under earn into perpetuity, this rate is not feasible. Therefore, the proposal to include the IBR in Rider AMP-CA is tantamount to the Company seeking cost recovery from ratepayers to test a hypothesis that a rate design will work as hoped, even though a confirmation of that hypothesis would make the rate implausible. This is certainly not information that can be used and useful and the Commission should deny any costs associated with the IBR experiment.

E. General AMI Pilot Program Cost Recovery

The position of the Illinois Industrial Energy Consumers ("IIEC") as presented in its Initial Brief remains flawed in one key respect; namely, its proposed disposition of Customer Applications costs. The IIEC continues to argue, despite the weight of evidence to the contrary, that "the cost of ComEd's Customer Applications component

of the Pilot Program should be allocated to the classes causing costs to be incurred, namely, the residential classes.” IIEC IB, p. 11. On the basis of this argument the IIEC continues to advocate a rider recovery mechanism that relieves larger non-residential customers of all responsibility for these costs.

The IIEC argument on this issue asserts that Customer Applications activities “cannot be fairly associated with delivery service.” *Id.*, p. 12. They contend that the costs include “administrative costs for rate designs associated with commodity service for residential customers and such things as programmable thermostats.” *Id.* The IIEC then goes on to argue that costs of this nature fall out of the purview of the Public Utilities Act (“PUA”). *Id.*, pp. 12-13. Therefore, the IIEC concludes that its approach “is not only more consistent with cost causation principles, it is more consistent with the provisions of the Illinois Public Utilities Act.” *Id.*, p. 13. The IIEC goes on to cite the ratemaking experience for energy efficiency riders in Docket No. 07-0540. The IIEC notes that the Commission allocated the costs of those programs “based on class differences and energy usage and whether the programs were specifically directed to members of those classes.” *Id.*, p. 14.

Each of the IIEC’s arguments is flawed. The contention that Customer Applications costs do not constitute delivery service costs is deficient in two respects. For one, many of the rate designs and technologies do not distinguish between supply and delivery components. Increasing block rates and critical peak pricing would not necessarily be limited to supply costs but could cover the delivery component of costs. Inverted rates and critical peak pricing, for example, do not necessarily have to be limited to the supply component of electricity costs but can include delivery costs as

well. Similarly, devices such as programmable thermostats referenced by the IIEC control both supply and delivery service usage.

Another problem with the IIEC's focus on whether these are delivery costs is the failure to consider that even an experiment that focuses on supply costs can benefit all rate classes. A case in point is the real time pricing component of Customer Applications. The results of this experiment would be relevant for larger non-residential ComEd ratepayers because they along with other customers are eligible to take service under an existing RTP tariff.

The IIEC's effort to connect these Customer Applications activities with energy efficiency programs in Docket No. 07-0540 presents problems as well. There is also a fundamental difference between the rate design experiments being examined under the Customer Applications process and the energy efficiency programs cited in the IIEC's Initial Brief. The energy efficiency programs considered in Docket No. 07-0540 provide direct benefits to individual customers in the form of lower energy costs and lower bills as a result. The proposed rate designs have a different purpose. They are not designed over the long run to lower the bills of each and every customer. Rather, their purpose is to encourage changes in consumption patterns that would benefit the system as a whole. For example, if the Company were to extend its inverted rate structure experiment to all residential customers, some customers would experience bill reductions, but others clearly would face higher bills as a result. However, there could be benefits to the system that outweigh the disadvantages for some individual customers that cause the utility to go forward anyway. Thus, the focus of these rate experiments is on sending signals to ratepayers to change their consumption patterns

and thereby lower system costs over the long run. There is no guarantee that individual ratepayers will experience lower bills under these alternative rates in the long run and it is possible, in fact, that they will go up. Thus, the benefits of the Customer Applications are clearly more system-oriented and the IIEC's proposal to assign the attendant costs to residential customers is misguided. Staff IB, p. 18. All customers should be allocated these costs under the weighted meter allocator proposed by Staff.

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve Staff's recommendations in this docket.

Respectfully submitted,

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